IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 04..9..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P. No.38323 of 2006
and
M.P.Nos.1 and 2 of 2006

K.Arumugam :: Petitioner

vs.

1. The Commissioner of Security
Bureau of Civil Aviation Security
A Wing, I,II, III Floor, Janpath Bhavan
Janpath
New Delhi

2. The Additional Commissioner of Security
Bureau of Civil Aviation Security
A Wing, I,II, III Floor, Janpath Bhavan
Janpath
New Delhi

3. The Deputy Director (Adm.)
Bureau of Civil Aviation Security
A Wing, I,II, III Floor, Janpath Bhavan
Janpath
New Delhi

4. The Regional Deputy Commissioner of Security
Southern Region
Bureau of Civil Aviation Security
Chennai Airport
Chennai

5. Sharad Srinivas
Deputy Commissioner of Security
Bomb Detection and Disposal Squad
Bureau of Civil Aviation Security
Chennai Airport
Chennai :: Respondents

Petition filed under Article 226 of the Constitution of India seeking for issuance of writ of Certiorari to call for the records relating to the order No.12018/2/2006 Admn. (Pt.) dated 15.9.2006 issued by the third respondent and consequential office order No.

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C/DCS/Est./06/843 dated 20.9.2006 of the fourth respondent and quash the same.

For Petitioner : Mr. M. Md. Ibrahim Ali

For Respondents : Mr.K.Gunasekar

O R D E R

The petitioner has filed this writ petition challenging the order dated 15.9.2006 passed by the third respondent wherein and by which the petitioner, who was the Dog Handler in the Bureau of Civil Aviation Security [for short, 'BCAS'], was transferred to the Regional Office of the BCAS at Calcutta with immediate effect. The said order was communicated by the fourth respondent.

2. According to the petitioner, the fifth respondent had threatened him with transfer and it was due to his malafide instigation, he has been transferred to Calcutta. In the writ petition, the learned counsel for the petitioner was directed to serve the respondents by 11.10.2006. The matter came to be heard after notice to the respondents on 18.4.2007.

3. I have heard the arguments of Mr. M. Md. Ibrahim Ali, learned counsel appearing for the petitioner and Mr.K.Gunasekar, learned counsel appearing for the respondents and have perused the records.

4. Learned counsel for the petitioner, while attacking the order of transfer, mainly relied upon the alleged threat issued by the fifth respondent. In fact, the petitioner was given a charge memo dated 10.4.2006 framed under Rule 16 of the C.C.S. (CCA) Rules, 1965. The second charge memo was also given on the same date signed by the fourth respondent. The first charge memo is with reference to the indiscipline on his part and his behaviour on 02.02.2005 and the second charge memo relates to his own behaviour on 18.8.2005 towards his superiors. The learned counsel for the petitioner, on this ground, wants to contend that it is based upon the misconduct and no enquiry has been held and out of four Constables, who were working for more than ten years in Chennai Region, the petitioner alone has been transferred out of Region and that the transfer did not have the approval of the first respondent. He also stated that initially, the post of Dog Handler was made only at Chennai and they were giving the impression that they will be working only at Chennai. All these allegations have been denied by the fourth respondent and it was clearly stated in paragraphs 6 and 7 of the counter affidavit dated 12.01.2007, which read as follows:

Para 6: "As regards to the averments made in para 7 of the affidavit, it is submitted that the appeal of the

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petitioner was under consideration of the Appellate Authority. After taking into consideration full facts of the case, the Appellate Authority has rejected the said appeal. However, in view of the fact that the atmosphere in the Chennai Dog Squad office was being further vitiated by the conduct of the petitioner, it was considered by the competent authority to transfer him in public interest from Chennai to Kolkata. Accordingly, the said order for his transfer to Kolkata was issued on 15.9.2006 and he was relieved from Chennai office vide order No. C/DCS/Est/06847, dated 20.9.2006. The representation submitted by the petitioner for cancellation of the said transfer order has also been considered by the competent authority and rejected. The petitioner has however in-defiance of the official orders failed to report to the office at Kolkata. Non-compliance of the said transfer orders has constituted a violation of conduct rule on the part of the petitioner, which further renders him liable for another disciplinary action.

Para 7: The contention of the petitioner made in para 9 of the affidavit that the post of Dog Handler is not a transferable post is wrong. Incumbents of all posts carry the liability to serve anywhere in the country in the public interest. This is made clear while circulating the vacancy by the department. However, frequent inter-regional transfers are not made because the Bureau of Civil Aviation Security is a very small organisation having miniscule staff strength. To ensure that the working of the Bureau is not disturbed, transfers are not made in the normal course. However, as and when it is considered necessary in the public interest or administrative exigencies, the transfers are ordered."

5. With reference to the approval being sought for by the first respondent, it has been clearly stated in the impugned order of transfer dated 15.9.2006 that the same was approved by the Additional Commissioner of Security (DSC). The power of this Court conferred under Article 226 of the Constitution of India to interfere with the order of transfer is very limited.

6. In this context, it is necessary to refer to the decision of the Supreme Court reported in 2004 (7) SCC 405 [State of U.P. And another vs. Siya Ram and another] wherein in paragraph 5, it has been observed as follows:

Para 5: "The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had

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gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan."

7. Further, the Supreme Court in yet another decision reported in 2004 (11) SCC 402 [State of U.P. And others v. Gobardhan Lal] has observed in paragraph 7 of the judgment as follows:-

Para 7: "It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent

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authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

8. In the absence of any valid legal grounds and factual pleadings regarding mala fides, the writ petition deserves to be dismissed and accordingly, dismissed. There will be no order as to cost. Consequently, connected Miscellaneous Petitions are closed.

gri

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

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4. The Regional Deputy Commissioner of Security
Southern Region
Bureau of Civil Aviation Security
Chennai Airport
Chennai

+ 1 cc to Mr. Md. Ibrahim Ali, Advocate SR No. 55223

+ 1 cc to Mr. K. Gunasekar, Additional Central Govt Standing Counsel SR 55818

order in

W.P. No.38323 of 2006

BVR(CO)
SR/10.9.2007

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